UNITED STATES COURT OF APPEALS
Second Circuit

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 15th day of September, one thousand nine hundred and eighty-two.

Present:

HONORABLE
IRVING R. KAUFMAN,

HONORABLE
JON O. NEWMAN,

HONORABLE
LAWRENCE W. PIERCE,

Circuit Judges

Seal:
Filed
Sep 15, 1982
A. Daniel
Fusaro, Clerk
2nd Cir Ct App

----------X

UNITED STATES OF AMERICA,

Appellee,

v.

PAUL ROBERTS BENEDETTO,
ELEANORE DOROSHOW,
WILLIAM MANN, ROBERT
EDWARDS and ELY ADES,

Defendants-
Appellants.

82-1059
82-1061
82-1063
82-1065
82-1067

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Appeal from the United States District

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited, or otherwise used in unrelated cases before this or any other court.

Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgments of said District Court be and they are hereby affirmed.

1. Benedetto, Mann and Ades challenge the sufficiency of the evidence introduced against them at trial. In reviewing such a claim, "the evidence must be viewed in the light most favorable to the [government], crediting all available inferences in [its] favor." United States v. Singh, 628 F.2d 758, 766 (2d Cir.), cert. denied, 449 U.S. 1034 (1980). Accord, Glasser v. United States, 315 U.S. 60, 80 (1942); United States v. Losada. 674 F.2d 167, 173 (2d Cir.), cert. denied, 102 S.Ct. 2945 (1982). In the instant case, the evi-

dence thus viewed, would allow a reasonable person to find each appellant guilty beyond a reasonable doubt. See United States v. Taylor, 464 F.2d 240, 243 (2d Cir. 1976). The evidence indicates that Benedetto and Mann contacted several of the victims, accepted money from them, and assured them that financing would be forthcoming, although it was clear that these promises could not be fulfilled. Moreover, they continued to accept fees and make assurances after they had failed to fulfill their promises and obtain financing

for other victims. Similarly, Ades acted as a go-between for Benedetto and Tedder, one of the victims of the fraudulent scheme. The jury could reasonably have found that Ades induced Tedder to pay fees to Benedetto, and himself received a portion of those

fees, although he knew that Benedetto would not fulfill his promise to obtain funding for Tedder.

2. Benedetto's assertion that the district judge abused his discretion by failing to sever Benedetto's trial from that of his co-defendants is without merit. The defendants were accused of participating in a common scheme, and in such a case the interests of judicial economy weigh in favor of a joint trial, unless there is a clear showing of prejudice. See United States v. Losada, supra, 674 F.2d at 171. The fact that the jury acquitted one of the defendants, and failed to convict several others of some of the counts, indicates the jury's ability to assess individual culpability, and thus, negates a claim of prejudicial spillover among the defendants. See United States v. Rico, 549 F.2d 264, 271 (2d Cir.) cert. denied, 431 U.S. 905 (1977);

United States v. Bubar, 567 F.2d 192, 205 (2d Cir.), cert. denied, 434 U.S. 872 (1977).

3. Benedetto further claims that he was granted transactional immunity by an FBI agent, who accompanied two German police officers who questioned Benedetto relative to an investigation they were conducting in Germany. Prior to being questioned by the German officers, FBI Agent Zane told Benedetto:

> A statement that you do make to the German police at this time will not be held against you in the United States courts in the event of any eventual prosecution of yourself except for impeachment purposes if you take the stand in your defense in any subsequent criminal trial. (emphasis added.)

The very terms of this agreement establish the possibility of prosecution in the United States. The agreement

clearly does not amount to an offer of transactional immunity. Moreover, the district judge found that the Government did not use any of the information it may have received in violation of Agent Zane's representations, and Benedetto has not shown that the court's findings were clearly erroneous.

4. Doroshow claims that she was denied her constitutional right to proceed pro se. See Faretta v. California, 422 U.S. 806 (1975). It is clear, however, that Doroshow never made an unequivocal request to proceed pro se, as she was required to do. See United States ex rel. Maldonado v. Denno, 348 F.2d 12 (2d Cir. 1965), cert. denied, 384 U.S. 1007 (1966). Her "request" consisted of a single remark made to the judge during an extended

colloquy on a different, though related subject. Moreover, the trial judge

did not understand Doroshow to be making a request to proceed pro se, and she never repeated her request despite numerous opportunities to do so, and despite the fact that she repeatedly complained to the judge about the alleged incompetence of her trial counsel.

5. Doroshow also contends she was denied her right to representation by competent counsel. While she raises a number of claims in support of this contention on appeal, most of these allegations were not raised before the trial judge who held a post-verdict hearing on this issue, and Doroshow has not adequately explained this failure. Moreover, this Circuit adheres to the "farce and mockery" standard in evaluating such claims, United States v. Helgeson, 669 F.2d 69 (2d Cir.), cert. denied, 102 S.Ct. 1978 (1982); Brinkley v. Lefevre, 621 F.2d 45 (2d Cir.) (per curiam), cert. denied,

449 U.S. 868 (1980), and Doroshow's claims, even if true, do not rise to this level. Indeed, in her reply brief, she does not even contend that she was denied her right to effective assistance of counsel under this standard, but relies only on the "reasonable competence" standard which this Circuit has declined to adopt. Assuming the "reasonable competence" standard applied, Doroshow, nevertheless, does not appear to have made a sufficient showing in support of her claim. Many of her allegations involve differences of opinion with regard to strategic decisions made by her attorney, and in such cases this Court has declined to use the benefit of hindsight and second-guess decisions made in good faith by an attorney. See e.g. Bellavia v. Fogg, 613 F.2d 369, 374-75 n. 8 (2d Cir. 1979).

6. An additional defense was raised on

appeal by Edwards, but applies to each of the appellants pursuant to Fed. R. App. P. 28(i). Edwards claims that a segment of a tele vision program broadcast during the trial was potentially prejudicial, and the trial judge erred in failing to question the jury about such prejudice. The broadcast did not concern the defendants directly, and in such a situation it is generally not necessary to question the jury. See United States v. Porcaro, 648 F.2d 753 (1st Cir. 1981); United States v. Magana-Arevalo, 639 F.2d 226, 229 (5th Cir. 1981). Edwards has not demonstrated any prejudice, and moreover, the fact that one of the defendants was acquitted, and the jury failed to convict some of the appellants on some of the charges against them, negates any such claim.

7. Appellants' other claims are also without merit.

8. Accordingly, the judgments are affirmed in all respects.

s/Irving R. Kaufman
IRVING R. KAUFMAN,

s/Jon O. Newman
JON O. NEWMAN,

s/Lawrence W. Pierce
LAWRENCE W. PIERCE,
Circuit Judges

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 27th day of October, one thousand nine hundred and eighty-two.

----------X

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PAUL ROBERTS BENEDETTO, ELEANORE DOROSHOW, WILLIAM MANN, ROBERT EDWARDS and ELY ADES,

Defendants-Appellants

----------X

Seal:
Filed
Oct 27 1982
A. Daniel
Fusaro, Clerk
2nd Cir Ct App

No. 82-1059

A petition for rehearing containing a suggestion that the action be reheard en banc having been filed herein by counsel for the defendant-appellant, Paul Roberts Benedetto.

Upon consideration by the panel that heard the appeal, it is

Ordered that said petition for rehearing is DENIED.

It is further noted that the suggestion for rehearing in [sic] banc has been transmitted to the judges of the court in regular active service and to any other judge on the panel that heard the appeal and that no such judge has requested that a vote be taken thereon.

A. Daniel Fusaro, Clerk

s/ Francis X. Gindhart

by Francis X. Gindhart,
Chief Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

82 1095
Docket No.

UNITED STATES OF AMERICA

v.

PAUL ROBERTS BENEDETTO,
Appellant

NOTICE OF MOTION For Stay of Mandate

MOTION BY:

THOMAS F. LIOTTI, ESQ.
(516)334-6409

Has a request of opposing counsel for consent been refused?

☐ Yes ☐ No

Has service been effected?

☒ Yes ☐ No

Is oral argument desired?

☐ Yes ☒ No

Requested return date:

November 3, 1982

Date of argument of appeal if scheduled:

OPPOSING COUNSEL:

CHARLES M. CARBERRY,ESQ.

EMERGENCY MOTIONS, MOTIONS FOR STAYS, & INJUNCTIONS PENDING APPEAL

Has request for relief been made below?

☐ Yes ☒ No

Would expedited appeal eliminate need for this motion?

☐ Yes ☒ No

If no, explain why not:

Judge or agency whose
order is being appealed:

Seal:_____

Filed
Nov 1 1982
A. Daniel Fusaro
Clerk
2nd Cir Ct App

Brief statement of the
relief requested:

Stay of Mandate Pending Application for Certiorari.

Previous requests for similar relief and disposition:

NONE

Statement of the issue(s) presented by this Motion:

Whether the Mandate will be stayed pending the Appellant's application for Certiorari pursuant to F.R.A.P. 41

Brief statement of the facts (with page references to the moving papers):

Appellant's Petition for a Rehearing was DENIED on October 27, 1982.

Summary of the argument (with page references to the moving papers:

Appellant's Petition for Rehearing was Denied on October 27, 1982. The Appellant has a

meritorious appeal that is not frivolous and he expects to prompltly [sic] file a Writ of Certiorari.

November 1, 1982
Date

s/Thomas F. Liotti
THOMAS F. LIOTTI
Attorney for Appellant-Benedetto

ORDER

IT IS HEREBY ORDERED that the motion be and it hereby is denied.

s/Irving R. Kaufman

s/Jon O. Newman

s/Lawrence W. Pierce

Seal:
Filed
Nov 5 1982
A. Daniel Fusaro
Clerk
2nd Cir Ct App

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

82-1095

UNITED STATES OF AMERICA	
Appellee-Respondent	STIPULATION AND CONSENT
vs.	TO CHANGE ATTORNEY
PAUL ROBERTS BENEDETTO	
Appellant-Petitioner	

IT IS HEREBY CONSENTED, AGREED AND STIPULATED THAT WILSON M. JACKSON, ESQ. of Jackson and Laska, P.C., c/o Tiffany Building, 30100 Van Dyke, Suite 329, Warren, Michigan 48093 shall be immediately substituted as the attorney of record in the above matter in place and stead of THOMAS F. LIOTTI, ESQ., CJA Counsel, c/o 507 WESTBURY AVENUE, CARLE PLACE, NEW YORK 11514 to prosecute and defend all future aspects of the instant case on behalf of the Appellant.

DATED: September 29, 1982

s/Thomas F. Liotti
THOMAS F. LIOTTI, ESQ.
507 Westbury Avenue
Carle Place, New York
11514
(516) 334-6409

DATED: October 5, 1982

s/Wilson M. Jackson
WILSON M. JACKSON, ESQ.
Jackson & Laska, P.C.
Tiffany Building
50100 [sic] Van Dyke
Suite 329
Warren, Michigan 48093

DATED: October 14, 1982

s/Paul Roberts Benedetto
PAUL ROBERTS BENEDETTO
Appellant-Defendant

(Seal) U.S. Dept of Justice

Civil Rights Division

Stamp:
12 Jan 1982

Honorable Daniel Patrick Moynihan
United States Senate
Washington, D.C. 20510

Dear Senator Moynihan:

This is in response to your inquiry concerning your constituent, Paul R. Dibenedetto. Mr. Dibenedetto is a blind person who was on trial in the District Court for the Southern District of New York and requested Braille copies of evidence produced in that trial. We have learned from the office of the United States Attorney for the Southern District of New York that Mr. Dibenedetto was convicted in that trial on November 3.

Although the Department of Justice has not yet issued regulations to implement the 1978 amendment to section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination on the basis of handicap in

programs and activities conducted by Executive agencies, we recognize that the statute imposes an obligation to provide effective communications to persons with visual impairments. I have been assured by the office of the United States Attorney for the Southern District of New York that every effort was made to accommodate Mr. Dibenedetto's handicap.

Specifically, the judge and the U.S. Attorney's office provided a Braillewriter, and tapes for a tape recorder which he used during the trial. Funds were provided for a paralegal to assist him during the trial, and court hours were reduced at his request to allow him adequate preparation time outside of court.

The vast majority of the documents used in the case were provided to Mr. Dibenedetto and his counsel during discovery in March 1981 and were available for him to review during all of the intervening months. To the extent that there were additional documents

they were provided well in advance of their introduction in court. Most government exhibits were pre-marked so Mr. Dibenedetto knew in advance which would be used. It would have been possible for him to have had any of the documents tape-recorded for his own use, but we do not know whether or not he did so. A court interpreter was provided to read documents presented while he testified. Most of the documents were his own records and he demonstrated great familiarity with them, occasionally correcting misstatements made by his counsel. Both he and his counsel received daily copies of the transcript.

Under these circumstances we see no need for further action by this Department.

We hope that this has been responsive to your inquiry. If we can be of any further help to you, please let us know.

Sincerely,

s/Wm. Bradford Reynolds

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
- v -	:	AFFIDAVIT
PAUL ROBERTS BENEDETTO, a/k/a "Paul Roberts" a/k/ "Paul Robert DiBenedetto", et al.,	:	81 Cr. 73 (LBS)
Defendants.	:	

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

GEORGE T. MANNING, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of John S. Martin, Jr. United States Attorney for the Southern District of New York. I was assigned responsibility for the above case on August 20, 1979, and am familiar with the proceedings in this matter. This affidavit is submitted in support of the Government's responses to several of Benedetto's pre-trial motions.

2. Indictment 81 Cr. 73 (LBS) was filed before Judge Edmund Palmieri on February 13,

1981. The Grand Jury investigation which led to Indictment 81 Cr. 73 (LBS) commenced in January, 1980. The Indictment charges the defendants with participation in a fraudulent scheme to obtain money from individuals and their affiliated entities which were seeking financial assistance. These individuals were directed to Paul Benedetto and Bankers Liason Corporation, Ltd., where Benedetto represented that he could obtain the financial assistance the victims were seeking. Benedetto demanded and obtained money from the victims by representing that funding for the victim's project was imminent but that certain fees must be paid in advance. These advance fees ranged from $160,000 to $5,000. The promised funding never materialized and none of the advance fees were returned.

3. The charges in the Indictment are based upon evidence presented to the Grand Jury in the form of testimony from the victims and persons associated with the victims, Special Agents of the Federal Bureau of In-

vestigation, certain of the defendants, and persons associated with the defendants or their businesses. Additional documentary evidence presented to the Grand Jury was obtained pursuant to Grand Jury subpoenas duces tecum served upon the victims, defendants, banks, accountants and Bankers Liason Corporation, Ltd., and other corporations. The victims testified as to their contacts with the defendants involved in their transaction and the events preceding and following the payments of the advance fees. From the victim's testimony and exhibits, the structure of the fraudulent scheme set forth in the indictment was established. With the exception of the victims Donald Murray and David Tedder, the Government first learned the names of the victims set forth in the indictment when Benedetto handed approximately 20 "loan packages" to Special Agent Myron Fuller of the Federal Bureau of Investigation at a meeting in Benedetto's apartment on July 5, 1978. Special Agent Fuller advised me that

he was acting in an undercover capacity at that meeting. Among the "loan packages" provided by Benedetto to Special Agent Fuller were the packages for Eugene Black and Thalmar Tankers, Ltd., Lenn Christie and John W. Fortune, Anthony Heaton, Seymour Hurwitz, Robert McManus, Geoffrey L. Sloan and Martin K. Sloan and John Wilkins. Murray and Tedder were victims who were defrauded of advance fees after July 1978 and they were brought to my attention by the San Diego office of the Federal Bureau of Investigation.

4. At trial, the Government will offer evidence obtained from Benedetto by Special Agent Fuller in July 1978, testimony and exhibits relating to the victims' dealings with Benedetto and the co-defendants, consensual tape recordings between co-defendant and victims obtained from Edwards, recordings obtained from the victims and possibly consensual tape recordings between Federal Bureau of Investigation agents and Melvin Weinberg and Benedetto.

5. I have been advised by Assistant United States Attorney Walter P. Loughlin that at least part of the claim of Benedetto in one of his motions is that the instant indictment was based upon a statement Benedetto gave to the West German Police on May 23, 1979. I first learned of this statement in the last 10 days of August 1979 after I was assigned this case. During this time, I met with Special Agent Fuller who provided me with a copy of a letter from Benedetto dated August 13, 1979 (attached hereto as Exhibit A), in which Benedetto referred to a "full understanding of immunity from prosecution as stipulated by Special Agent Zane", and a copy of a statement dated May 23, 1979 provided by Benedetto to the West German police ("Benedetto statement"). At that time, I read some portion of the May 23, 1979 statement. I cannot presently recall if I read all of the statement or only part, but I do recall reading some portion of it. Seeing no references to any immunity in the opening portion of the

statement, I asked Special Agent Fuller to determine what was the basis of Benedetto's reference to a "grant of immunity" in his August 13, 1979 letter. At some point in late August, I received from Special Agent Fuller a copy of a tape recording which contained the statement of Special Agent Zane which preceded the May 23, 1979 interview. I have never hear a recording of the full May 23, 1979 interview. After hearing the tape of Special Agent Zane's statements to Benedetto, I instructed Special Agent Fuller to write a memorandum detailing all information obtained in his investigation prior to his reading the Benedetto statement and the sources of the information he had obtained. Special Agent Fuller wrote a memorandum dated August 28, 1979, a copy of which I retained in my files. I also instructed Special Agent Fuller that he was not to use any information contained in the Benedetto statement in his investigation of the case. I placed my copy of the May 23, 1979 statement in my files and have not read

it since August 1979. I recalled having made a couple of typographical corrections on the copy of Benedetto's statement that I retained. On March 30, 1981, in an attempt to refresh my recollection as to how much of the statement I read, I flipped through the statement to determine where my typographical corrections were. I did not read the Benedetto statement at that time and returned the statement at that time and returned the statement to the file. I cannot recall anything from whatever portion of the Benedetto statement that I read in August 1979.

6. In a letter dated September 14, 1979, I responded to Benedetto's August 13, 1979 letter and set forth the Government's position with respect to Special Agent Zane's statement to Benedetto on May 23, 1979. A copy of my September 14, 1979 letter to Benedetto is attached as Exhibit B.

7. On August 1, 1980, the Government was served by Wilson M. Jackson, Esq., counsel for Benedetto, with a motion to quash grand jury

subpoenas duces tecum served on Benedetto and Doroshow personally and as agents for Bankers Liaison Corporation, Ltd., were prepared by me without any reference to Benedetto's statement.

8. To my knowledge, no evidence presented to the Grand Jury was obtained directly or indirectly from the information contained in Benedetto's statement. I drafted the indictment in this case in February 1981 for presentation to the Grand Jury. All the allegations contained in the indictment came as a result of a review of the evidence presented to the Grand Jury.

9. I do not intend to offer into evidence at trial any statements made by Benedetto on May 23, 1979. However, if he testifies, I intend to read the May 23, 1979 interview to the Government's cross-examination of Benedetto. If so, I would intend to use any such relevant information on cross-examination, consistent with Agent Zane's representations to Benedetto on May 23, 1979.

10. To my knowledge, no evidence I intend to offer in the Government's case in chief was derived, directly or indirectly, from Benedetto's May 23, 1979, statement.

WHEREFORE, The Government requests that Benedetto's motion to set aside the indictment be denied.

s/George T. Manning
GEORGE T. MANNING
Assistant United States Attorney

Sworn to before me this
27th day of April, 1981.
[sic]

BANKERS LIAISON CORPORATION LTD.
300 East 74th Street· Suite G·
New York, N.Y. 10021
212-879-4915
Cable: Liaison, N.Y.

August 13, 1979

Special Agent Robert Halter
Federal Bureau of Investigation
26 Federal Plaza
New York, N.Y. 10007

Dear Sir:

In connection with the transcript of the conference of May 23, 1979, which conference was held at my office with Special Agents Robert Zane and Thomas Steadtmiller, of the FBI and Messrs. Horst Theiss and Manfred Fabiunke, Superintendents of Criminal Police, Frankfurt/Main, Germany, I am prepared to sign the transcript at a time and place convenient to you before a Notary Public. I will do this with the full understanding of immunity from prosecution as stipulated by Special Agent Robert Zane of the FBI at the beginning of the conference of May 23, 1979 as recorded on the tapes of that conference, but not included in the transcript. My statements were made after

Special Agent Robert Zane gave me an agreement of immunity as spelled out on the tapes, in advance of the statements on the transcripts.

I will also provide any and all additional documentation relative to the same matter with the same guaranty of immunity. The additional documentation is also mentioned in the tapes but not stated in the transcript. I will do all of the above on the basis of the guaranteed immunity provided by Special Agent Robert Zane of the Federal Bureau of Investigation.

Very truly yours

s/Paul Roberts DeBenedetto

_____

Paul Roberts DeBenedetto

Exhibit A

United States Department of Justice

(Seal) UNITED STATES ATTORNEY
Southern District of New York
One St. Andrew's Plaza
NEW YORK, NEW YORK 10007

GTM:jp

September 14, 1979

Mr. Paul Robert DeBenedetto
Bankers Liaison Corporation, Ltd.
300 East 74th Street
Suite 5G
New York, New York 100021

Dear Mr. DeBenedetto:

The Federal Bureau of Investigation has referred your letter of August 13, 1979 to this office. Your letter refers to a "full understanding of immunity from prosecution" that resulted from conversations with Special Agent Robert Zane prior to statements made by you to West German police officials on May 23, 1979. That and other statements in your letter indicate that you believe that you have obtained an immunity from prosecution by the United States Government from Special Agent Zane. This is not the case. In order

that there will be no confusion as to your status, Special Agent Zane's comments to you did not provide an "immunity from prosecution" or an agreement of immunity. Special Agent Zane is not and was not authorized to grant you immunity from prosecution and did not do so on May 23, 1979. No formal immunity has been afforded you.

Special Agent Zane merely advised you as to the legal consequences of statements you made to the West German authorities on May 23, 1979. His statement to you follows:

> "A statement that you do make to the German police at this time will not be held against you in the United States courts in the event of any eventual prosecution of yourself except for impeachment purposes if you take the stand in your defense in any subsequent criminal trial."

This statement does not afford you immunity from prosecution and is not an agreement of immunity, and only has the effect of restricting the use of your statements on May

23, 1979 to impeachment purposes.

With respect to any documentation you may provide to the West German authorities, there is no agreement whatsoever as to those documents. If in the future you supply the documents to the West German authorities, you do so without any understanding as to their future use by the United States Government. To date, no documents have been supplied. If documents are supplied to the German authorities, they may be used against you in any proceeding in the United States and their use will not be restricted in any way.

Very truly yours,

ROBERT B. FISKE, JR.
United States Attorney

By: s/George T. Manning
GEORGE T. MANNING
Assistant United States Attorney
Telephone: 791-1990

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

PAUL ROBERTS BENEDETTO,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent.

APPEARANCE

NOW COMES WILSON M. JACKSON, a Member of the Bar in good standing, duly authorized to practice before the Supreme Court of the United States, and hereby enters his appearance as attorney for petitioner in the above entitled cause.

WILSON M. JACKSON P15389
30100 Van Dyke
Suite 329
Warren, Michigan 48093
313-573-4890

Dated: November 22, 1983 [sic]